

My overall comment is that the proposal should be "skinnied down" as much as possible to avoid unnecessary opposition. The basic premise should be manufacturer's responsibility and no where should the proposal specify how the manufacturer will generate the revenue necessary to support the program except for the authority of the TPO to charge fees. We strongly support the "opt out" provision for manufacturers who choose to create an independent collection program. Further, the manufacturer's assigned responsibility should be based on return share as well as the orphan waste. Following are some specific comments by section. Thank you for the opportunity to comment.

Section 1:

- The less said the less to fight over. Delete unnecessary verbiage.
- Paragraph 6 - Delete all reference to a fee and just simply say that the manufacturers shall be responsible for the cost of the program.

Section 2:

- The task force agreed to exempt retailers and manufacturer's from the certified collection registration. This did not get included in the draft. A suggestion is to require retailers and manufacturers to include this information on their assigned responsibility plan. This avoids a second registration.
- Collection location should not be worded in a way that would prohibit retailers from collecting products because the location is not as convenient as curbside.
- We support the small business exemption.
- A CPU is a chip and not equipment. This is an expansion on the definition in 2488. The definition of 2488 should be the definition for covered products in the bill including the exemptions.

Section 4:

- Disagree with the language that allows manufacturers to "charge a fee at the first point of possession." This is not a manufacturer's responsibility scheme. This merely shift the financial burden to the retailer in most cases. Should be deleted. The permission for a manufacturer to charge a "fee" at retail indicates some type of state mandated fee. Why is this language even necessary?

Section 5:

- The distribution of responsibility for both the initial obligation and orphan waste should be based on return share rather than market share to more fairly represent the cost of recovery. A mechanism should be instituted under the TPO to charge new firms with no return share to date to participate in the cost of orphan share recovery.

Section 6:

- The registration fee should include an additional amount that covers the DOE costs of maintaining the e-waste proportional share of the current 800 number and web site.
- Language should be included to make clear that unregistered product may not be distributed either any chain of distribution including remote sales.
- Language should be included that requires DOE to maintain a web page of currently registered manufacturers and their authorized brand names so that retailers are informed as to what products may be legally sold. Adequate inventory clearance provisions must be provided for unregistered product - one year after notice to retailers.

Section 7:

- Include definition of 200 or fewer employees as a small business.

Section 8:

- Delete this section. Unnecessary. Manufacturers will already be motivated to work with large employers as a result of their assigned responsibility.

Section 10:

- It was agreed at the last meeting that manufacturers and retailers that are collecting, transporting and/or processing their own collections will not have to register. However, since then some concerns have arisen. My concern is too much paperwork, registrations, etc. Retailers that are participating in collection on a voluntary basis are not going to file with the state to be a good citizen. This will discourage retail participation. Recommend that the exemption be included but a section be added to the manufacturers registration that asks if they will be collecting, transporting or processing e-waste. If so, have a section to complete that satisfies the oversight needs. This will capture the larger retailers that have private label and the manufacturers who intend on having their own program but takes away the paperwork for other retailers and businesses that want to help on a voluntary basis.
- Move language from Section 15 to this section that requires DOE to maintain a listing of certified collection, transportation and processing service providers on the internet.

Section 11:

- We don't know if the Green Track Label is the correct format but we would like to see incentives for manufacturers to make improvements in their products by reducing hazardous substances and enhancing recyclability of the product. We believe that at the minimum government preferential purchasing should be included.

Section 12:

- This language probably needs to be strengthened to specifically include the TPO organization and specific reference to the state's public records law.

Section 13:

- This section should simply say that a person may not knowingly distribute a covered electronic that does not bear the registered brand name. All the other stuff of misleading or false information is already covered under the Consumer Protection Act.

Section 15:

- Delete this whole section. Manufacturer's registration already requires education plan and manufacturer's responsibility scheme motivates aggressive education.

Section 16:

- Delete section. This is an unnecessary new tax. Addressed in remarks on Section 6 and existing education component required in the plans.

Section 19:

- Concerned with this section and would like to see a rewrite. Any hazardous substance mandate should not reach beyond the covered products definition. Additionally, we must be very careful not to establish a standard for this state that is in conflict with other existing standards that drive manufacturing standards. We look to the manufacturers for guidance here.

Section 20:

- Great section. Well worded.

Section 22:

- Recommend that all penalties have a delay date to allow all of us to become informed and familiar with all the aspects of the new law. We are treading new ground and we must be encouraging rather than heavy handed. We should also include first warnings in the penalty section as an educational tool unless the business has knowingly broke the law. On the other hand, we need strong penalties once the program is beginning to mature so that we have a level playing field.

Section 23 - 29:

- We should create and authorize the TPO with a framework in which to operate. This section is too detailed. We need to give it more flexibility and let the owners of the TPO - the manufacturers - have greater control over the operations.



Institute of  
Scrap Recycling  
Industries, Inc.

[www.isri.org](http://www.isri.org)

September 21, 2005

Jay Shepard  
Solid Waste and Financial Assistance  
Solid Waste Advisory Committee  
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*Re: The Institute of Scrap Recycling Industries, Inc. (ISRI) Comments to the State of Washington  
Electronic Product Recycling Proposal – August 2005*

Dear Mr. Shepherd:

The Institute of Scrap Recycling Industries (“ISRI”) represents the largest number of recyclers throughout the world. With more than 1,200 members that process, broker and industrially consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics and textiles, ISRI is considered the “voice of the recycling industry.” More than 20 percent of ISRI’s membership is involved in electronic scrap processing and industrial consumption of scrap material generated by electronics recyclers.

ISRI appreciates the opportunity to work with the Washington State Solid Waste Advisory Committee (“Committee”) and submit comments on the August 2005 version of the State of Washington’s electronic product recycling proposal. We recognize this is a complex issue and the committee has made strides to craft a workable solution to this growing issue. However, ISRI has several serious concerns with the following draft proposal.

### **Introduction**

ISRI supports efforts that promote a market-based, sustainable recycling infrastructure, and facilitates the recycling of electronics in an environmentally sound manner. We also support efforts to develop end-use markets for the materials recovered from scrap electronics, to promote manufacturer design improvements to make electronics easier to recycle and to avoid the use of hazardous materials in the manufacture of electronics products, and to promote the benefits of environmental management systems, such as ISRI’s Recycling Industry Operating Standard (RIOS) as the proper means to address environmental concerns.

Further, ISRI strongly believes that electronic manufacturers, retailers, collectors, transporters and recyclers must work together to utilize the current reuse/recycling infrastructure to create an efficient system for dealing with obsolete electronics. We want to be clear from the outset; we want to ensure

that scrap electronics are collected, handled properly, and processed into valuable commodity products - not disposed of in landfills.

## **Section 1: Definitions**

***Certified collection, transportation and processing systems and service provider*** - ISRI does not support creating a certification system for the collection, transportation, and processing of electronics. Legislation passed last year concerning permitting and certification of transporters excluded the scrap recycling industry since it would have severely disrupted the collection of scrap materials and harmed small businesses. Accordingly, we strongly encourage this definition to be removed from this proposal. (Please see our comments for Sections 2, 6 & 8.)

***Collection location*** - It is unnecessary for collection locations to be operated by “certified collection service providers.” Contractual relationships between a manufacturer, collector, transporter, and processor provide the necessary assurances and legal protections to ensure these materials are recycled. This definition should also be removed from the proposal. (Please see our comments for Sections 2 & 8).

***Processed or processing*** - We are unsure what “materials for refining” (sic) means. We would encourage clarification of this definition.

***Unwanted product*** - ISRI encourages the definition of “unwanted product” be changed to “recyclable product.” These products do contain value and ISRI recommends that they should be recognized as so.

## **Section 2: Requirements**

ISRI is concerned that the proposed permitting and reporting requirements are unnecessary and will hinder the growth of a sustainable recycling infrastructure. ISRI strongly believes that contractual relationships between manufacturers, collectors, transporters, and processors are the best solution to ensure that end-of-life electronics are handled in an environmentally responsible manner.

Under the current legal environment, electronic recyclers, retailers, collectors and individual businesses contractually commit to environmental management standards that protect from manufacturers, collectors, transporters, and processors from liabilities that are associated with exporting recycled/reuse electronics and/or recycling electronics in a non-environmentally sound manner. Furthermore, ISRI is implementing a comprehensive, integrated, quality, environmental, health and safety management system called the Recycling Industry Operating Standard or RIOS.

ISRI agrees with the committee that residual materials with no recycling value should be allowed to be disposed at legally permitted disposal facilities after processing. We commend the committee for recognizing the practical issues involved in recycling these products.

## **Section 3: Costs to be borne by manufacturers through the sale of their products**

ISRI believes the best financial mechanism would be for manufacturers to take some responsibility for the cost of recycling their products by internalizing the cost of collecting, sorting, transporting and recycling of a defined set of electronics for two primary reasons. First, we recognized that producer responsibility provides a greater incentive to encourage manufacturers to adopt Design for Recycling®, a concept that

ISRI has been advocating since the early 1980s. Second, we believe that internalization will be cheaper for the consumer/taxpayer.

We believe that if given the flexibility and opportunity to internalize the costs, manufactures will create a model that will be less bureaucratic and burdensome and cheaper for the tax payer. However, certain manufacturers insist that a consumer tax in the form of an Advance Recycling Fee (ARF) will be cheaper and provide more incentives for designing their products to be recycled than manufacturers internalizing the costs. We disagree. Instead, we recommend inserting the following language in lieu of the Committee's language:

- (1) No fees may be charged to consumers for the collection, reuse or recycling of covered electronic products by any person or entity participating in or being compensated by a statewide program operated by a manufacturer for a recycling or take-back or any other program for the reuse or recycling of covered electronic devices.<sup>1</sup>

#### **Section 6: State government and the state institutions of higher education**

ISRI refers the Committee to our comments for Section 2 wherein we suggest that private party contractual relationships are the best solution to ensuring that end-of-life electronic products are handled and managed in an environmentally sound manner. Most electronics manufacturers and collectors already require such chain of custody requirements and ISRI is currently developing best practices guidance for our industry. Therefore, we encourage the committee to recognize existing business relationships and the corresponding legal instruments that already achieve these purposes.

#### **Section 7: Existing collection, transportation and processing services**

ISRI supports fully utilizing the existing recycling infrastructure. We believe this is the best solution to the recycling needs of the state. ISRI members have significant experience in the recycling of electronics and other materials and this experience should be utilized to its fullest extent.

Electronics recyclers make their living by providing de-manufacturing services, such as scrubbing and reselling hard drives, by reselling cell phones, monitors and CPUs that are in good working order, and by using machinery and equipment to shred or otherwise process electronics to extract the various commodities that are in electronics like steel, aluminum, gold, silver, titanium, copper, nickel, plastic and glass. Furthermore, ISRI supports entrepreneurial initiative to solve the recycling issues confronted by the state.

#### **Section 8: Registration of Collectors, Transporters and Processors**

ISRI disagrees that registration of collectors, transporters and processors is necessary. First, we need to avoid creating unnecessary impediments to recycling. Defining and treating obsolete electronics as waste

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<sup>1</sup> The Northeast Recycling Council ("NERC") and the Council of State Governments ("CSG") has developed draft electronics recycling legislation, hereinafter "NERC/ESG." While ISRI does not support the NERC/CSG discussion draft in its entirety, ISRI suggests the Committee recognize this regional effort and the lessons learned to improve the electronics recycling program in Washington State. NERC/ESG at 11.

undermines and overlooks the value that these electronics retain if properly recycled. Saddling them with the moniker of waste imposes a whole host of unwarranted regulatory burdens that will undermine the ability to create a viable and sustainable recycling infrastructure.

I don't see the relationship of your comments here and section 8 of the proposal as the word "waste" does not appear in that section (or to my knowledge, anywhere else in the language of the document). There is no one outside your organization that has beat the drum of commodity of value and not waste harder than I have, so I need your help in understanding the concern.

It is very important to distinguish the difference between scrap and waste. Scrap is not waste. Processed scrap materials are commodities that have a value on domestic and international markets, whereas waste materials have no value and are typically buried in a landfill.

Both recyclers and their customers are concerned that the recordkeeping requirements as proposed by the committee would jeopardize the confidentiality of their contractual relationships providing competitors with confidential business information. ISRI suggests the committee review the recordkeeping protocols in either our RIOS standard, the ISO 9000 and 14000 standards or another environmental and management system standard for solutions.

Therefore, we recommend inserting the following language in lieu of the Committee's language:

(1) On and after \_\_\_\_\_ and at least once annually, each manufacturer of a covered electronic device sold in this state shall do all of the following:

(a) Submit to the State or Third Party Organization a report that includes all of the following information:

i. An estimate of the number of covered electronic devices sold by the manufacturer in the State during the previous calendar year, calculated as its U.S. national market share in the previous calendar year for that unit multiplied by the percentage of the national population represented by the state in the most recent U.S. decennial census.

ii. A baseline or set of baselines that show the total estimated amounts of mercury, cadmium, lead, hexavalent chromium, and PBB's used in covered electronic devices manufactured by the manufacturer in that calendar year and the reduction in the use of those hazardous materials from the previous year.

iii. A baseline or set of baselines that show the total estimated amount of recyclable materials contained in covered electronic devices sold by the manufacturer in that calendar year and the increase in the use of those recyclable materials from the previous calendar year.

- iv. A baseline or a set of baselines that describe any efforts to design covered electronic devices for recycling and goals and plans for further increasing design for recycling.<sup>2</sup>

## **Section 9: Green Track Label**

ISRI fully supports these efforts. In fact, our initiative began many years ago entitled “Design for Recycling” calls upon manufacturers to design their products to be easily recycled at the end of their useful lives, without using hazardous or toxic constituents that can hinder the recycling of those products, and to be manufactured using recycled materials.

ISRI’s Design for Recycling initiative contemplates cooperative efforts between manufacturers, recyclers and the government, in research and development efforts, in defining and understanding the challenges faced at every stage of a product’s life cycle, and in mutual efforts to develop better ideas. It is important to understand that greater Design for Recycling will increase recycling productivity that will ensure a stronger more sustainable infrastructure.

We recommend inserting the following language in lieu of the Committee’s language:

- a. The State or Third Party Organization shall annually publish a report on the use of toxics in covered electronic devices that incorporates and analyzes information provided by manufacturers described in Section 10 above.
- b. On April 1 of each year, and beginning two years after the date of enactment, State or Third Party Organization shall publicly announce, through widespread press announcements and postings on the State or Third Party Organization’s Web site, which manufacturer and/or brands of covered electronic devices in the previous calendar year contained the least mercury, cadmium, lead, hexavalent chromium and PBB’s, which contain the highest recycled content, and which have demonstrated the greatest overall improvements in recycled content and decreased toxic content. Manufacturers and/or products so recognized will have the right to use this status in its advertising promotion, and for any other lawful purpose.
- c. Within two years of the enactment of this law, the State or Third Party Organization shall make recommendations to the Agency and Legislature for additional incentives for Green Design.<sup>3</sup>

## **Section 12: Reuse of Covered Electronic Products**

ISRI supports the reuse of electronics whenever it is practicable. Electronics recyclers make their living by providing de-manufacturing services, such as scrubbing and reselling hard drives, by reselling cell phones, monitors and CPUs that are in good working order. ISRI also agrees that reused electronics should not be included in the product recovery rate for the manufacturer’s share of responsibility.

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<sup>2</sup> NERC/ESG at 6.

<sup>3</sup> NERC/ESG at 11-12.

(1) Covered electronic devices collected through any program in the State, whether it be by manufacturers, retailers, for-profit or not-for profit corporations, units of government, or organized by the State or a third party organization, must be reused or recycled in a manner that is in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and must not be exported for disposal in a manner that poses a significant risk to the public health or the environment.<sup>4</sup>

I am not sure why you have included the language above – the relationship to the comment at the top is not clear.

### **Section 17: Restrictions on Hazardous Substances**

ISRI supports the reduction and ultimate removal of as many hazardous substances as practicable from electronic products. However, only the state legislature has the authority to impose hazardous substance restrictions onto manufacturers.

Ah, right. This is a recommendation to the legislature. So the point is not clear.

ISRI suggests the Committee focus on providing recommendations to the state legislature that will hold manufacturers responsible for the design and collection of their products, toward improving the private collection systems, and providing incentives for creating end-use markets for the materials from end of life electronics, especially plastics.

### **Section 18: Deferral to national program**

ISRI supports the Committee's proposal to remove these requirements once a national electronics recycling program is established. Eliminating potentially conflicting state laws, regulations, and programs will enable recyclers to better utilize a national recycling infrastructure.

### **Conclusion**

ISI wants to remind the committee what electronics recycling is all about, and that is recycling. At the end of the day, it will be the electronics recyclers that end up with electronics on their doorsteps, and that is exactly what we want. Our job is to make sure electronics are properly recycled in order to protect America's environment and support our global economy. We do not want an over-regulated system that makes it impossible to do our job.

So the program describe in the proposal would be an over-regulated system? A few questions come to mind.

Recyclers are already required to report the type and amount of materials recycled in the state annually. How does the additional reporting requirements impact the ability of the industry to provide its services?

If there is no oversight, registration, etc. what is there that keeps the individual that chooses to operate outside the appropriate and legal practices from doing so? How would a non registered "here today, gone tomorrow" operator be prevented from competing illegally with legitimate companies like yours?

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<sup>4</sup> NERC/ESG at 12.

How can contractual obligations between two private parties be used to enforce laws of the state and federal government?

Sincerely,

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Submitted via electronic mail to jshe461@ECY.WA.GOV

September 28, 2005

**Re: Comments of Hewlett-Packard Company on the Management of  
Unwanted Electronic Products Proposal**

Dear Jay:

I want to thank you for all of the time and effort you have put into the "Management of Unwanted Electronic Products" proposal. You and the Agreement Dynamics team are to be commended for the way the committee has gone about its work. There has been little of the non-productive debating that I've seen in other states, and I agree we have come a long way from where we started. However, HP still has a number of concerns with the proposal as it is currently written and we appreciate the opportunity to bring them to your attention.

***The manufacturer recycling obligation should be based on return share, not current market share.***

Our first concern is the method through which a manufacturer's obligation is determined. Because the number of units sold by a manufacturer in a given year bears no relationship to the number of that manufacturer's units returned for recycling, the current market share approach of the proposal (Section 5) is not a correct basis for a product stewardship approach. HP believes the best method for determining this obligation is by using return share.

Under the proposal's current market share approach, an existing manufacturer that no longer makes a given covered electronic product would have no current sales, but many thousands of that manufacturer's previously produced products could be discarded. That manufacturer should have a financial obligation when its products impose costs on the recycling system. Current covered electronic product manufacturers should not have to pay to recycle an existing manufacturer's products. The current market share approach is also unfair to new market entrants, which will incur recycling costs when their products need to be recycled.

One of the underlying purposes of the proposal is resource conservation. Our experience in Europe shows that different brands have very different return rates. A return share system allows manufacturers to benefit from improved environmental design and innovation. Those manufacturers that collect their own brand products can benefit from design improvements they have made. For manufacturer's paying others to recycle their products, the marketplace will reward them for improved product design through lower costs. In addition, manufacturers who make more durable products that last longer for the initial owner, and that may also be used by second or third owners before being

2

discarded, would benefit from their efforts under the return share approach. This is because these manufacturers recycling obligations would be deferred. Both of these return share benefits encourages resource conservation. A market share approach would not provide these resource conservation incentives and assuming similar disposal rates for all brands penalizes companies who, through design, have embraced the product stewardship

philosophy.

The proposal's fee would be collected by manufacturers as part of the wholesale price of the covered electronic product. Because the fee would be used to fund collection and recycling of covered electronic products regardless of when and by whom they were sold, and would not specifically benefit the manufacturer paying the fee, the fee is, in effect, an excise tax. As such, the tax likely faces Constitutional issues concerning its validity. This fee would also place an unfair burden on in-state retailers as it would not be possible to collect from remote sellers.

A manufacturer recycling system based on return share would not face these equity, resource conservation, and legal issues.

HP proposes that the Department calculate manufacturer equivalent shares annually by a simple calculation: each manufacturer's return share percentage of covered electronic products is multiplied by the total weight of covered electronic products collected in manufacturer and local government recycling programs. A manufacturer's return share percentage is simply the number of covered electronic products identified for that manufacturer divided by the total number of covered electronic products identified for all "non-orphan" manufacturers. The number data will be reported to the Department annually based upon periodic sampling of covered electronic products returned into the system. Calculations are made separately for computer monitors and TVs.

***The scope of covered electronic products should be limited to those from households (individual consumers and small businesses).***

HP has some suggestions regarding the plans that each manufacturer and the Authority will need to submit to the Department for approval under the proposal. HP agrees with the Department that larger businesses do not need to be included in this new structure as there exist current obligations and opportunities for these entities. However, we believe the proposal should address and focus on the un-served market: households and small businesses. For larger businesses and institutions, managing the disposition of older equipment is an ordinary and appropriate cost of doing business and ample recycling opportunities are available through their procurement practices and buying cooperatives (WSCA). As written, the proposal relieves them of their established regulatory obligation. All levels of government should be encouraged to fulfill their existing obligation by accessing the services readily available. HP acknowledges the likelihood of some leakage from large-scale users into the system. We do not believe this will have a significant effect on volumes and including large institutions in the overall structure will serve only to complicate and confuse the system. HP therefore suggests limiting the scope of Section 7 to private individuals and small businesses.

***The Level of Service requirement for manufacturer independent plans should not require a set number of collection sites.***

3

The proposal, as it is now written, establishes an arbitrary number of collections sites without knowing what the actual needs are of the state and its citizens. HP supports the goal of providing a convenient and accessible system for all of the citizens of Washington. However, requiring a set number of sites does not assure the obligation established in this proposal will be met. In addition, requiring a set number of sites will block manufacturers from minimizing the cost of the system (a stated goal of the proposal) while

providing convenient and accessible services. The Department will have opportunity to review and approve the manufacturers' plans to assure the goals of the proposal are met.

It is almost impossible to predetermine consumer behavior, which setting an arbitrary number does. The marketplace has established the number of retail sites that are appropriate for the state of Washington. Sites enter and leave the marketplace based on the needs of the consumers and a balance between cost and demand is met. HP encourages the Department to allow manufacturers this same flexibility in how they meet their obligation.

It is interesting to look at California, the only state which has a mandated recycling program. California has a population nearly 6 times that of Washington, with an equally diverse urban/rural make-up. The proposal's required 536 sites in Washington would translate to more than 3,000 collection sites in California. According to a presentation by Karl Palmer of the California Department of Toxic Substance Control at the 2005 Hazardous Materials Management Conference, California is using only 286 registered collectors with approximately 400 locations to meet the state's recycling needs. Remember, there is, and has been, a landfill ban in California for a number of years on the covered electronic devices.

***The Restrictions on Hazardous Substances provision is overbroad and, as currently written, would prevent all covered electronic products from being sold in the state.***

Section 19 ("Restrictions on Hazardous Substances") requires that after July 1, 2006, covered electronic products sold in the state "shall not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PDBE)." This provision would prevent all covered electronic devices from being sold in the state. HP recommends deleting this section in its entirety.

As you are aware, the European Directive called "Restriction of Hazardous Substances" ("RoHS") limits the amounts of the chemical substances listed above that can be present in electronic products sold within the European Union. The restrictions contained in RoHS are not static restrictions and will change over time. To the extent that Section 19 was intended to establish RoHS requirements for Washington, HP considers this to be inappropriate for a number of reasons. RoHS is a legal requirement applicable to electronic products sold in the European Union, and manufacturers generally are complying on a worldwide basis. Incorporating RoHS requirements into state legislation will not provide any additional incentives to increase the recyclability of products. Moreover, inclusion of such material restrictions in U.S. state legislation will create confusion and interfere with the flow of these products in interstate commerce because the state requirements may be different from RoHS or may be interpreted by state agencies differently than the worldwide standard. Manufacturers for the global marketplace cannot

4

anticipate and comply with different design standards from individual states in the U.S.

***Waste Reduction, Recycling and Litter Control Tax.***

Inclusion of this new set of products within the Waste Reduction, Recycling and Litter Control Tax appears to be an attempt to raise funds. Unlike the consumables currently taxed through this program for which part of the funds

are required to be used for recycling, covered electronic products would be subject to the collection, transportation, and processing (recycling) system established in the proposal, which would eliminate the need for such a tax. Under the proposal, the Department would have funds from manufacturer fees to perform audits, education, and other activities to make the proposal successful.

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The five issues we discussed above prevent HP from supporting the proposal as it is currently written. The suggestions we have made would alleviate several major HP concerns. However, the proposal is a concept proposal and not a legislative draft, and as such, the proposal is not as specific as legislative language would be. As a result, it is impossible for us to state all of our concerns until we see the legislative draft.

In addition to the concerns stated above, HP would like to provide comments on a few other provisions as examples of analytic and drafting issues posed by the proposal.

**Section 2 (“Definitions”).** Several of the definitions in this section are not used in the proposal. Some of the definitions are inconsistent with one another, e.g., compare the definition of “unit” with “covered electronic product.” And several of the definitions are ambiguous, overbroad and/or too detailed to serve as “definitions” and would more appropriately be part of the main legislative text, e.g., “collection location.”

**Section 4 (“Costs To Be Borne By Manufacturers . . .”).** This section requires “manufacturers [to] demonstrate to the satisfaction of the department that there has been adequate funds set aside to cover the costs of their programs.” No similar requirements are made for manufacturers opting to participate in the standard program to demonstrate that they have funds set aside to pay the Authority. Moreover, such a demonstration is unnecessary because the proposal contains enforcement mechanisms to use against manufacturers who fail to fulfill their obligations -- either to the Authority or in an independent plan.

**Section 6 (“Manufacturer Registration and Licensing”).** This section prohibits the sale in the state of covered electronic products until the Department has issued a license to the manufacturer. A manufacturer cannot obtain a license until its recycling plan is approved by the Department. The way this section is drafted -- with manufacturers submitting a registration of intent to sell covered electronic products within 90 days of the effective date of the Act and plan approval and licensing occurring sometime after that -- will end up prohibiting the sale of covered electronic products in the state for an extended period after enactment of the Act. This section needs to be revised to provide for orderly implementation and maintenance of the new program without a disruption of commerce.

5

**Section 9 (“Existing Collection, Transportation and Processing Services To Be Used”).** This section sends mixed messages. While it states the desire to minimize costs, it also requires manufacturers to assure the use of existing services. If the existing services are more expensive than new services (e.g., those provided by new market entrants), “assuring” that manufacturers use existing services is contrary to the stated goal to minimize costs. This section should be eliminated or at the least the wording changed to: “Manufacturers

shall *examine* whether utilizing existing collection, transportation and processing systems and services within the state provides the most cost effective service to the citizen of Washington."

**Section 20 ("Deferral to National Program").** This section provides that if Congress enacts a national system for covered electronic products substantially similar in intent to the proposal, including the creation of a financing mechanism, then Sections 1- 16 become null and void. No reason is provided why Sections 1 - 16 were selected rather than the entire proposal. We recommend that in this instance, the entire act should become void, not just selected sections.

**Section 23-29 ("Materials Management and Financing Authority").** As HP understands Sections 23-29, they establish a special purpose government agency (the "Authority") that would act as a "business management organization" whose Board of Directors would be comprised of manufacturers plus several *ex officio* government officials. The Authority would establish and collect the fees paid by manufacturers and set up and manage an electronic device recycling program. Under the proposal, a manufacturer may choose between making fee payments to the Authority and using the Authority's recycling program to meet the manufacturer's recycling obligation or submitting an independent recycling plan to the Department. Although HP has questions about the legality and practicality of the Authority as reflected in the proposal, based on HP's intention to provide the Department with an independent plan, HP will refrain from commenting further on these sections at this time and encourage the Department to obtain guidance on the legality and practicality of the scheme.

Thank you, Jay, for taking the time to consider our comments above. Please understand that the issues that prevent HP from supporting this proposal are of great importance to HP. As stated above, HP may have additional concerns that would prevent us from supporting the proposal once the proposal has been written in legislative language. HP believes that the time is right in Washington to move forward with this important legislative initiative and that the proposal if amended as we have suggested, could be a vehicle for that legislation. Again, thank you for all of your hard work on this. It has been a pleasure working with the Department in its effort to provide a recommendation to the legislature.

Sincerely,

Larry King

Americas Product Take Back  
Hewlett-Packard Company

**The following are the comments submitted by the Electronics Manufacturers Coalition for Responsible Recycling. The members listed below include major manufacturers of televisions, computers, and laptops.**

|                 |  |         |
|-----------------|--|---------|
| Canon USA       | LG Electronics                             | Sanyo   |
| Fisher          |  |         |
| Epson           | Mitsubishi Digital Electronics America     | Sharp   |
| Electronics     |  |         |
| Hitachi America | Panasonic (Matsushita Electric)            | Sony    |
| Electronics     |  |         |
| IBM Corporation | Philips Consumer Electronics North America |         |
|                 | Thomson Inc.                               |         |
| JVC America     | Pioneer                                    | Toshiba |
|                 | Samsung Electronics America                |         |

Mr. Jay Shepard  
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September 26, 2005

Dear Jay,

On behalf of Sharp and the Electronic Manufacturers Coalition, I would like to thank you for all the time and effort that you dedicated and continue to commit to the effort to develop a recommended path to the Washington legislature on how to address end of life electronics. I recognize that you are in a difficult situation by having to assimilate the views of all the stakeholders and will ultimately have to defend the final recommendation. We are pleased that the draft does focus on current sales in an effort to ensure that no current manufacturer is put at a disadvantage. However, Sharp and our Coalition members are concerned that the efforts are not taking into consideration the preferences of the economic engine that will power the program once it is in place. We are also concerned that the "opt-out" plans will allow "cherry picking" by manufacturers of the more heavily populated regions of the state, leaving the fee-based program with the job of paying exclusively for the more rural collection programs.

Sharp and many of the other members of our Coalition have presence in the state and ship products into the US through the ports of Seattle and Tacoma, employing Washington citizens and generating other jobs in the state. Our collective expertise in this area reflects our history in this state and in the US in addressing the issue of end-of-life electronics and we have done our best to provide you and the task force with our knowledge in this area to assist you in developing a program that will address the needs of the citizens in the state of Washington in a cost-effective manner.

Sharp and the Coalition have made it clear that we support a specific financing method. This method is fee-based and we have been flexible in how this can be implemented. The point-of-sale fee is without a question the easiest way to generate the necessary

funds, capture the overwhelming majority of the market, and reach the user of the product. It also provides the state with a choice on how best to manage the waste.

In addition, Sharp and the members of our Coalition have provided to you alternatives that are more complex to implement than the retail fee, but that are somewhat successful in other jurisdictions. We have also provided detailed, documented evidence, data, and independent analysis of these systems, including reports by California officials on the California program, details on the Alberta “first sale” fee system, and letters and reports from retailers detailing their preferred methods in the Alberta system.

We have also provided you with the report of the Michigan Task Force and the Minnesota OEA which has analyzed the options and determined that a fee-based system is the preferred option, utilizing the existing infrastructure, sharing the responsibility among all of the stakeholders, and ensuring the creation of a sustainable financially sound system. A task force in Oregon also reached the same conclusion last year. The Michigan report, the latest of several that we have provided to you, appears not to have been considered or utilized in the development of the model discussed in the previous meetings.

The model that you have developed places the entire burden on the manufacturers in a manner that will be neither cost efficient nor enforceable. For example retailers, who are the intermediaries between the consumers and manufacturers and are in the best position to assist in either the collection of funds or end-of-life product from the consumer have no obligations to participate in a meaningful fashion. This flies in the face of evidence and data provided by the Goodguys program in Seattle, the Staples Pilot Project in the Northeast, and the nation-wide Office Depot program which all demonstrated that retailer take-back can provide a low-cost, effective option with little government oversight.

**Section 4** of the model, which deals with how costs are to be borne, along with **Section 26**, contain a fatal flaw in that it is virtually impossible for a manufacturer to include the costs of the program on products sold in that state without a mechanism for tying the product to a specific sale in the state. Without that ability, a manufacturer’s options may be to impose those costs only on the mostly small in-state retailers, which will further reduce their competitiveness with their big box brethren such as Best Buy. It also provides a huge advantage to Internet sellers such as Dell over other manufacturers, possibly driving us out of the brick and mortar stores and into the Internet sales market. If current Internet sales cause states difficulty by reducing sales tax revenue, this model is more likely to exacerbate that problem than remedy it.

We believe that, as a minimum, any programs implemented by manufacturers as described in **Section 7** must include collection and processing equivalent to their current market percentage of sales. For new entrants into the market, they should be prohibited from utilizing such an option until such time (3-5 years after initial entry) that their market share can be established and calculated. This must hold for completely new entrants into the market as well as established entities who in the market but are entering a new product category that is covered. (For example a TV manufacturer who enters the

computer market should be deemed to be a new entry into that market an ineligible to submit a program to collect computers. They would be required to pay the fee (based on first sale into the state as discussed previously) for those computer products annually (or as determined) for each of their first 3-5 years of sales into the state before they can submit a plan for those computer products.)

We are also concerned with the **Section 7** reference to government and other non-consumer products that are covered by the system. We believe that any products covered by the system must include the costs in the price of the product, preferably via a fee collected at point of sale. There is no financing mechanism included in the proposal for these products and that must be addressed. Either the products are included with an identified financing mechanism or they are excluded. We note that it is difficult, if not impossible to determine the origin of the products once they hit the waste stream. Therefore we can accept a financing mechanism that covers both business and consumer products.

We are also concerned with the Registration Fee program outlined in **Section 7** (and note that there are two Section 7's in the proposal). We believe that all costs, including registration fees, should be included as part of the system costs for those companies that utilize the fee approach and oppose duplicative registration and licensing requirements. We understand that there are additional administration costs for those companies that choose to submit their own plan and will allow those companies to determine how best to finance those costs. Finally we are concerned with the collection service requirement as there is no data to determine if this is the most cost effective way to collect the product. We believe that the level of service should be measured by amount of material collected per citizen (we are projecting that California will achieve between 1.1 –1.3 pounds per citizen, well on its way towards the 2.6 pounds per citizen achieved by the Hennepin County MN program after 12 years of operation) rather than by the number of collection sites.

**Section 8** regarding businesses is unnecessary as such companies are already under obligation by existing Federal and State law to properly manage such products. In addition, this program is meant to address consumer products and we believe that this section exceeds the needs of the program.

While we understand the state's concern that the already-developed infrastructure for EOL electronics be used, we believe that **Section 9's** requirements go beyond the authority that the state has to control the flow of the products and will greatly reduce the TPO's and individual manufacturers' ability to control reduce the system costs. Everyone in the system, from the TPO to individual manufacturers must have the ability to contract for services with any entity that fulfills the legal requirements of the program regarding the handling and processing of the materials.

We believe that the restrictions in **Section 10** may exceed the states authority to regulate entities located outside the United States. We would suggest that the section be reworded.

While we believe that manufacturers should be recognized and rewarded for their environmental design activities, we do not believe that a state program as outlined in **Section 11**, is the best way to do so. Such a program must be national if it is to have any traction with the manufacturers.

**Section 15**'s requirement that a 1-800 number be used is not the most effective way to convey the information. In our industry, there has been and will continue to be a significant amount of consolidation, which, for products with an average lifespan of 11 years (computers) and 17 years (televisions), will make it impossible to ensure the accuracy of any such phone number. We would recommend that an industry website such as the already established [www.eiae.org](http://www.eiae.org), be used to convey the most recent information on the program.

We believe that the **Section 19** restrictions should be rewritten so that they are consistent with the requirements of the California program. As written, the section ignores critical exempted uses for the targeted materials and reduces the market value of the materials generated from the recycling of EOL electronic products. Under the language of the proposal the sale of all laptop computers, LCD monitors, CRT, plasma, and LCD televisions would be prohibited. We do not believe that the intent of this task force is to ban products.

**Section 21**, as written, appears to place the entire liability burden on manufacturers, whether they pay a fee or opt to submit a plan. This section should only apply to a manufacturer that is operating his own program and, so long as that manufacturer performs due diligence in selecting a processor, exempt him from further liability, consistent with the Federal Superfund statute. It is important to note that these products differ from those which the manufacturer has had title to during the majority of the product's life and the liability for those products should be restricted to reflect that difference.

It is unclear in **Section 22** how the penalties will be assessed and who will have that authority.

In **Section 26**, we are uncertain as to why the proposal sets a \$10, minimum fee, when the California program is demonstrating that the system is over funded (as we predicted using a \$10 maximum fee. It is our recommendation that this section caps the fee at \$10 and allows the Authority to adjust the fee within the cap as costs dictate. Allowing the Authority to set the fee without a cap will not provide any incentive to make the system cost efficient.

The **Section 25** Board Membership should be narrowed if it is to be effective. We would suggest allowing the relevant trade associations to name a fixed number of representative companies to defined terms on a rotating basis. We also believe that the day-to-day operations of the authority should be left to a CEO hired by the board to run the authority and paid for, along with the other administrative costs, from the collected fee. The

Authority's general administration budget should be capped at no more than 5% of the total collected fees.

Sharp and the Coalition will continue in its efforts to work with you and the other members of the task force to develop a workable model based on our knowledge of, and experience with, these products. While we hope that the efforts will result in a proposal that can be supported by our company and its Washington employees, we are becoming increasingly concerned about the ability of the group to achieve that goal this late in the process. We will continue to be an active participant in this process and hope that you and the Task Force Members will be receptive to our needs and proposals.

Sincerely,

Frank Marella

Senior Manager, Corporate Environmental Affairs

Sharp Electronics Corporation *on behalf of* the Electronics Manufacturers Coalition for Responsible Recycling

## Estimates of Televisions and Computers Discarded Annually in California

California's Environmental Protection Agency has estimated a legacy of more than 5 million obsolete TVs and computer monitors must be dealt with annually in the state.

This estimate comes from a study, "Selected E-Waste Diversion in California: A Baseline Study ("Study"), which was done for the CIWMB and published in November 2001.

### Study Assumptions

- Sales and product data are insufficient to predict when a product will become e-waste and therefore cannot be used to predict diverted volume
- Technology trends will not alter CRT-containing volume in the near term
- Survey of California processors to determine anticipated generation rates
- Telephone survey of California households to determine "stockpile"

### Study Methodology: Surveys of processors in California

- Primary processors: Refurbish or repair for resale, or resell as is
- Secondary processors: Demanufacture (dismantle) products in order to recover raw materials.
- Historical average forecast: Uses historical volumes of products processed from 1996 – 2001 to project future volumes
- Self-reported forecast: Applies processors own projections for 2006 volumes to a statewide forecast

Base Study Volume Range of Diverted E-Waste Projected for 2006 (tons unless otherwise specified)

|         | Primary Processing | Secondary Processing | Total Volume Diverted | Total Volume Diverted (units) |
|---------|--------------------|----------------------|-----------------------|-------------------------------|
| TVs     | 4,600 – 6,600      | 2,300                | 6,900 – 8,900         | 276,000 – 356,000             |
| Monitor | 25,000 – 46,300    | 14,800 – 35,400      | 40,900 – 68,500       | 2,726,394 – 4,566,210         |
| Total   | 29,600 – 52,900    | 17,100 – 37,700      | 47,800 – 77,400       | 3,002,394 – 4,922,210         |

1. Assumes 40 TVs per ton
2. Assumes 66.66 monitors per ton
3. For TVs, only processor self-forecast was used. Secondary market for TVs dominated by single processor.

Thus the CIWMB estimate of 5,000,000 (4,922,210) represents the high end of a range forecast for 2006.

#### Concerns about Assumptions in the Study:

- Survey of primary and secondary processors is limited to California. Survey does not account for products that were imported into California for processing or exported out of California for processing.
- Survey does not distinguish between business generated and household generated products. Vast majority of computer monitors likely generated by businesses, and will be handled outside the financing and collection systems established by SB 20.
- TV results seem skewed by large percentage of charity organizations reporting results. Almost 2 – 3 times the volume recycled are processed for resale. Experience with Massachusetts recyclers, a state that has a landfill ban in place and emphasizes repair and resale, suggests that only 10% of all TVs collected are repairable.
- Although anecdotal, some California processors were collecting TVs and exporting them to Mexico for repair and parts salvaging.

#### Stockpile

Based on a telephone survey the Study concludes that Californians are stockpiling approximately 6 mm CRT-containing products: 2.9 mm TVs and 3.2 mm computer monitors. The TV stockpile is more than 8 times greater than the forecast for discards in 2006.

It is assumed that the CRTs will enter the recycling system once legislation is enacted, potentially overwhelming the financing system and processing capacity.

#### Concerns with Assumptions

- Only 24% of the TV respondents state that the TV is non-functional, suggesting that most Californians are storing the TV for some other reason. We cannot assume that they will throw away a functioning TV.
- Study further assumes majority of California residents will recycle their stockpiled CRT products once a recycling system is put into place. Experience suggests they will discard / recycle their CRT products based on personal reasons independent of the existence of a recycle program. The vast majority of stockpiled CRTs in California were put aside at a time when disposal was convenient and free (bulky goods disposal program). The proposed system is not likely to be any more convenient than the old system. Why, then, will residents rush to dispose of extra units? Experience with consumer behavior suggests that they will not place the set into a recycling system until they are ready.
- California communities have been collecting TVs and computer monitors for almost 2 years, thereby reducing the stockpile. Fifty percent of the State's communities --- and the vast majority --- of its population are now covered by recycling programs.

**The pertinent need is to determine what people will actually throw away when a recycling system is put in place.**

There are a number of different mechanisms for estimating the number of televisions and computer monitors that Californians can be expected to make available for recycling on an annual basis. Rather than utilizing surveys of anticipated generation and stockpiled products or estimates based on historical sales and product longevity, more reliable estimates can be derived from the experience of established, comprehensive and well-funded programs in the U.S. and around the world.

Estimates of TVs Discarded Annually in California.

| Program                          | Population  | TVs collected <sup>1</sup> | TVs per capita | Type of program              | Years since inception |
|----------------------------------|-------------|----------------------------|----------------|------------------------------|-----------------------|
| Holland <sup>2</sup>             | 16,000,000  | 300,000                    | 0.0187         | National ARF                 | 3                     |
| Japan <sup>3</sup>               | 127,435,000 | 3,520,000                  | 0.02762        | National EOL Fee             | 2                     |
| Hennepin County, MN <sup>3</sup> | 1,088,700   | 25,041                     | 0.023          | Tipping fee - curbside / HHW | 11                    |
|                                  |             |                            |                |                              |                       |
|                                  | Population  | TVs Collected              | TVs per capita | Type of Program              | Years since inception |
| CA Baseline Study <sup>4</sup>   | 36,000,000  | 356,000                    | 0.0099         | TBD                          | N/A                   |
| CAL EPA Estimate <sup>5</sup>    | 36,000,000  | 3,000,000                  | 0.0833         | TBD                          | N/A                   |
| CA Estimate Holland              | 36,000,000  | 673,200                    | 0.0187         | TBD                          | N/A                   |
| CA Estimate Japan                | 36,000,000  | 994,320                    | 0.02762        | TBD                          | N/A                   |
| CA Estimate Hennepin, MN         | 36,000,000  | 828,000                    | 0.023          | TBD                          | N/A                   |
| CA Estimate Average <sup>6</sup> | 36,000,000  | 815,580                    | 0.02266        | TBD                          | N/A                   |

1. Based on most recent annual collection data available: Holland 2002, Japan 2002, Hennepin County (Minneapolis), MN 2001
2. Based on estimate by Andre Habets, Haag-Tehcno, Holland. Actually collection is measured in metric tons. (Private communication, June, 2003)
3. Based on actual numbers collected. (2001, Hennepin County data)
4. Taken from CIWMB "Selected E-Waste Diversion in California: A Baseline Study," November 2001.
5. EIA estimate: CAL EPA estimates that Californians discard approximately 5 million TVs and computer monitors per year. TVs are estimated to comprise 60% of that total.

6. Average estimate for California based on three of the world's leading collection programs. Does not include Baseline Study and CAL EPA estimate.

**Thus, the Hennepin County per capita generation rate represents the most reliable basis upon which to forecast the number of TVs that Californians are likely to recycle per year. As the table illustrates, the “actual” number of TVs likely to be recycled in California is closer to 828,000.**

Estimates of Computer Monitors Discarded Annually in California

| Program             | Weight per capita (pounds) <sup>1</sup> | Monitors per capita | Program Type                | Years since Inception | CA Projected Monitor Discards <sup>4</sup> |
|---------------------|---|---------------------|-----------------------------|-----------------------|--|
| Netherlands         | 1.65                                    | 0.022 <sup>2</sup>  |                             | 3                     | 792,000                                    |
| Switzerland         | 4.41                                    | 0.0588 <sup>2</sup> | National ARF                | 9                     | 2,116,800 <sup>5</sup>                     |
| Belgium             | 0.89                                    | 0.0119 <sup>2</sup> |                             | 2                     | 428,400                                    |
| Hennepin County, MM |   | 0.011 <sup>3</sup>  | Tipping fee, curbside / HHW | 10                    | 396,000                                    |
| Delaware            |   | 0.022               | Tipping fee, Drop-off       | 2                     | 792,000                                    |
| Howard County, MD   |   | 0.013               |                             | N/A                   | 468,000                                    |
| Massachusetts       |   | 0.0215              | State, tax-based            | 2                     | 774,000                                    |
| Average             |   | 0.023               |                             |                       | 823,886                                    |

1. Weight of IT Equipment Collected per Inhabitant (in pounds). These 3 programs track only IT Equipment, including both LCD and CRT monitors
2. Assumes IT Equipment is 40% monitors, 30% CPUs and 30% Other Equipment (printers, copiers, fax, etc.), based on weight. Average monitor weight assumed to be 30 pounds.
3. National Electronic Product Stewardship Initiative (NEPSI) data
4. Assumes California population to be 36,000,000.
5. Includes IT equipment collected from all business generators, as well as households.

**EIA believes that an average of the above programs represents the most reliable forecast for the number of computer monitors that California households and small businesses will generate on an annual basis in the near-term future.**

CAL EPA also estimates that there is a legacy stockpile of TVs and computer monitors that totals 6.1 million units. The Hennepin County program has been in place for 11 years, and has grown gradually since its inception in 1992. As a well-funded, well-publicized program that is comprehensive and convenient, it negates the concern that the stockpile of legacy products will overwhelm the collection system, either physically or financially. Minnesotans that live in Hennepin County have had ample time to recycle any legacy stockpile they may have had on hand. The same logic holds true for computer monitors. The data simply do not indicate a stockpile problem.

|                       |
|-----------------------|
| <b>Cost Estimates</b> |
|-----------------------|

The Baseline Study estimates the total annual cost of collecting and recycling 5 mm TVs and computer monitors at \$83,000,000.

Assuming 20% cost for management overhead, we need \$16,600,800 for administration costs, for a total management cost of \$99,600,000, or \$20.42 per CRT-product collected and recycled.<sup>5</sup>

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<sup>5</sup> While acknowledging that TV and computer monitor recycling costs differ, we have used the average cost \$20.42 per CRT-product in this analysis since the cost ranges in the Baseline Study (Page 22) exhibit a large range that is not easily broken down into more precise numbers. Dell Computer currently offers door-to-door pick-up for a computer monitor for a total of \$15. IBM's recycling service allows for 2 monitors to be shipped from anywhere in the US and recycled for \$29.99.

## California EPA CRT Analysis

07/22/03

|   | Television          | Monitors            | Total               |
|---|---------------------|---------------------|---------------------|
| <b>Baseline Study</b>                                   |                     |                     |                     |
| Estimated Discards 2006 (CA Units)                      | 356,062             | 4,521,500           | 4,877,562           |
| A. Collection and Recycling Cost                        | \$6,059,000         | \$76,941,000        | \$83,000,000        |
| B. ARF Administraiton (20% of A)                        | \$1,211,800         | \$15,388,200        | \$16,600,000        |
| <b>C. Total Collection &amp; RecncingCost (A + B)</b>   | <b>\$7,270,800</b>  | <b>\$92,329,200</b> | <b>\$99,600,000</b> |
| <i>Cost per Unit</i>                                    | <i>\$20.42</i>      | <i>\$20.42</i>      | <i>\$20.42</i>      |
| D. 2002 Sales Estimate (CA Units)                       | 4,160,000           | 4,680,000           | 8,840,000           |
| <b>E. ARF per Unit Sold (C / D)</b>                     | <b>\$1.75</b>       | <b>\$19.73</b>      | <b>\$11.27</b>      |
| <b>EIA Estimate</b>                                     |                     |                     |                     |
| F. Estimated Discards (CA Units)                        | 828,000             | 823,866             | 1,651,866           |
| <i>G. Cost per Unit</i>                                 | <i>\$20.42</i>      | <i>\$20.42</i>      | <i>\$20.42</i>      |
| <b>H. Total Collection &amp; Recycling Cost (F * G)</b> | <b>\$16,907,760</b> | <b>\$16,823,344</b> | <b>\$33,731,104</b> |
| I. 2002 Sales Estimate (CA Units)                       | 4,160,000           | 4,680,000           | 8,840,000           |
| <b>J. ARF per Unit Sold (F / H)</b>                     | <b>\$4.06</b>       | <b>\$3.59</b>       | <b>\$3.82</b>       |

**Notes:**

Baseline Study: Done by MGT America, November 2001

D: Assumes straight-line calculation. California represents 13% of US population.

Using the Coalition estimate of 828,000 TVs discarded annually and a cost estimate of \$20.42 per unit, California would need \$16,907,760 in fees to cover the cost of collection and recycling.

According to data provided by the Consumer Electronics Association (CEA), 2002 TV sales in the U.S. were estimated at approximately 32,000,000 units. Assuming Californians purchase 13% of total sales (based on percentage of U.S. population), we estimate that approximately 4,160,000 TVs were sold in California in 2002.

Therefore an average fee of \$4.06 per TV sold would be needed to fund one year of TV collection and recycling in California.

The same set of assumption for computer monitors produces an estimate of \$11,271,840 needed per year. Estimated 2002 sales for the US was 36,000,000 units, not including laptops. Californians are assumed to purchase 4,680,000 monitors in 2002, or 13 percent

of the total. This translates into an estimated ARF of \$3.59 per desktop monitor sold. It should be noted, however, that this analysis does not distinguish between computers sold to businesses and households.

This analysis assumes that the stockpile forecast by CIWMB will be removed from California homes and small businesses as an integral part of the EIA's discard projections, as our experience in Minnesota and other advanced countries demonstrates.

**Comments on September 05 Draft: Management of Electronic Products  
2488 Process**

**Submitted by Sego Jackson**

**Snohomish County Solid Waste Management Division, 9/26/05**

**General comments:**

I have worked on this all day and have run out of time to go back through it and double check some things. These include:

- a. I think there is a section missing about the authority of the Agency (Ecology) and its role in setting standards and approving plans. The agency needs to review and approve the plan of the Authority, as well as the plans submitted by independent manufacturer's who wish to operate their own programs. I believe you have tried to task the Authority (TPO) with oversight of the independent plans but this isn't possible, as you will have competitors sitting on the Authority's board. Ecology will need to approve the plans of all parties.
- b. Therefore, Ecology will need to set rules on what allows an independent plan to be acceptable, and to provide equivalent service and performance to the standard Authority plan.
- c. In doing this, the issue of return share, market share, and equivalency will reappear and must be addressed. The text on the Authority's internal process is silent on this because it can be. The fee is on new product, period. But the text doesn't explain that those filing independent plans must base their program share on returns or market share. I think return share is more feasible.
- d. I think one way to make this work so new manufacturers can't simply sidestep any responsibilities by filing a "return share" independent plan, in which they have no return share, is to require them to be part of the Authority's standard plan, and pay the per unit sold fee. This will reduce the overall cost of the system for the others and encourage use of the collective system. At the point the Authority is ready to take over fee adjusting and design, it might come up with a lot of different ways to apportion costs. But I think a KEY is to have a company with a RETURN share of less than 2% have to be in the standard program. This will deal with the issue of fairness regarding new major market players who have no return share.

The result of this rambling is that I have thought of several components and I'll suggest them here:

1. Include the ability of any party (or the authority or any manufacturer with an approved plan) to sue any manufacturer that is selling in the state but does not have an approved plan.
2. Units collected from “free rider” brands are treated the same as orphans.
3. Only manufacturers with a 2% or greater return share in any of the covered product categories are eligible for submitting independent plans.
4. Responsibility between independent plans and the standard plan is divided by return share.
5. Within the standard plan, fees are paid by the manufacturer.
6. Number of units assumed to be sold in the state (for purposes of setting the number of units the manufacturer pays fee on) are based upon market share derived from national figures unless and until the Authority can determine a more accurate methodology.
7. Those operating under independent plans must cover an equivalent share of orphans and free riders, based on return share between all independent plans and the standard plan.

I’m out of time. Comments below state “no comments” where I have no comments after review. Sections without text are those that I ran out of time to go back to.

### **Section 1 Purpose and Findings**

The standard program and individual plans as outlined in this section represent a good synthesis of needs we have heard from various stakeholders and sets in place a system structure that should work well for local governments. Key concerns of local governments are:

- a. Collection costs be covered. This is implied in the text.
- b. That local governments not be required to provide collection. The text refers to utilization of existing systems and services but does not require any part of that system to participate. It covers collection and mentions contracted collection services, but does not identify local governments as having to provide the service. This will allow those governments that choose to collect the ability to do so, and those that choose not to, that choice.
- c. That the collection system is effective and encourages additional collectors instead of or to supplement government programs. This text implies this to be the case, though it isn’t prescriptive in describing how this will come about. “Contracted collection services” implies payment, choice and diversity. Those governments that are unable or choose not to provide services will want to see that the system has in place financial incentives and intent that other collectors be empowered and incorporated into the system. Those governments, such as Snohomish County, that have shown a willingness to provide some collection services, cannot provide the level of collection that is as convenient to our citizens as they will expect or need.

Based on these 3 key concerns, the system as described in this section is supportable.

## **Section 2. Definitions**

### **Section 3. Intent**

Local rules in Snohomish County do not allow for a disposal exemption for residential HHW, including these “covered electronic products.” As of October 1<sup>st</sup>, when the King County ban comes into effect, 43% of the state’s population will fall under local disposal bans (King, Kitsap, Seattle, Snohomish). I have heard from other jurisdictions an interest and intent to ban disposal when viable alternatives are in place.

A state-wide ban would make the system much more effective. However, you have responded to stakeholder comments (haulers) that they cannot accept an initial disposal ban. A number of local governments may take this same position, as demonstrated in testimony on HB 1492, the original e-waste bill in Washington State. Comment received at that time included the following:

- a. Some rural governments did not believe that manufacturers would actually implement effective programs in their areas, and therefore they would have to implement service themselves and were not prepared to for a variety of reasons, paramount being the cost involved.
- b. Secondly, and in part to avoid a. above from happening, issues were raised as to whether landfill disposal was really problematic, and even if so, wouldn’t that be better than impacts of export of hazardous materials and abusive recycling practices overseas.
- c. I have heard the issue raised that some jurisdictions might be concerned about loss of revenue from diverting electronics from their disposal system.
- d. A shared concern among governments and private sector disposal operators revolves around responsibility for retrieving illicitly disposed units from within the garbage.
- e. Concern about the cost of illegal dumping clean ups if a ban is in place and an adequate and no cost recycling system is not in place.

**It is important that the legislation NOT impact those local jurisdictions where bans are currently in place. Some might read the text regarding the fee to be paid for choosing disposal to override local bans on disposal.**

While I personally find the text about a higher fee to be paid for disposal an interesting approach to address a number of concerns, I have heard a number of local government staff state that they do not like that approach and I can see that it could bring about some opposition from some local governments.

I recommend the following related to this section, with an eye to meeting local government concerns and avoiding unnecessary opposition:

- a. Do not attempt a ban on disposal, or higher fees for choosing disposal, at this time.
- b. Allow a process that compares how effectively the system works in those areas with bans in effect and those without, and use that information to make recommendations in the future.
- c. Limit the landfill disposal of material collected within the new system to 15% by weight, limited to only those materials for which there is no market.
- d. Limit the msw landfill disposal of material that is collected within the new system to non-hazardous materials only and to lined landfills only.

Such an approach will be supportable by local governments because:

- a. Existing bans will remain in effect and those areas without bans will not be forced to implement them. Very likely a number of other jurisdictions will put bans in effect when an effective alternative system is put in place.
- b. Governments that want to protect revenues will be able to receive revenues by putting collection programs in place.
- c. Governments and other disposal facilities will not have to fish illicitly disposed units out of the garbage at the transfer station or landfill.
- d. The issue of landfill suitability for e-waste can be side-stepped for those who believe it is an acceptable option.
- e. The no-cost and convenient recycling system will minimize illegal dumping clean up costs and remove any incentive for residents to cross county lines to avoid disposal costs and bans in their county of residence.

#### **Section 4. Costs to be born by manufacturers through the sale of their products**

The key concern of local governments will be that it be clear that collection costs are paid for by both the independent plans as well as the standard program. How the manufacturers do that, while providing a no-fee at time of recycling service, is up to them.

#### **Section 5. Distribution of Responsibility**

Local governments, charities and others need a front end financed system in place as soon as possible. As long as our other needs are met, the details of this section are not critical to us, other than that a formulation is developed that results in successful legislation as a result of clarity and smart system design.

## **Section 6. Manufacturer Registration and Licensing**

### **Section 7. Plans**

This section describes a system that will be supportable by local governments, charities and other collectors.

Several comments:

Charities should be added to the list of entities manufacturers are encouraged to collaborate with.

Manufacturers should work in collaboration with STATE AND local governments in developing and implementing public information campaign.

**Level of Service** – This level of service, based on one location per 11,200, is attainable. A similar analysis was done in Snohomish County before we established our programs, which include private Take it Back Network drop off and other services, and publicly provided services at 3 of our transfer stations. Interim to a front end financed system, these services all charge an end of life fee, which creates obstacles and difficulties.

Our original analysis showed that it was not possible to provide adequate service or very convenient service simply using government solid waste disposal facilities. This led us to looking at who else might provide collection service, with the right incentives in place. We found that there were at least 50 likely locations, including big box stores and key charities. This was the basis of our Take it Back Network strategy. Three years later, we now have about 20 private recycling locations or services in the County which have been established in the challenging environment in which they need to charge relatively high end of life fees and assume all risk. Note that until this month, NONE of our partners have included the big box stores or key charities that we originally identified in our initial analysis.

Under the system described in this draft, I have no doubt that our goal of 50 locations will be attained. Using the formula of one location per 11,200 people, Snohomish County would have 58 locations, pretty much spot on.

All of these locations will easily transition to the new system described and other locations should be able to be established quickly.

I have attached a chart that shows the number of locations in each county based on this formula.

As long as service is provided in all counties, it is reasonable to have the number of locations ramp up over time, so that a first year target is  $\frac{1}{4}$  the number of retail locations,

year 3, ½ the number of retail locations, year 5 the 1 for 1 target. Task some entity with tracking this and reporting results.

I don't think that plan updates every 4 years is adequate, and instead suggest that plans be updated annually.

## **Section 7. Government Electronic Products Recycling and Procurement Practices**

Unfortunately, this section is necessary and is needed to not only make sure that governments are handling unwanted materials properly, but that they have proper options in place and are protected. We have seen many problems with current surplussing practices by the state, the county and our school districts.

From a local government perspective, it would be a much more effective to have all commercial and large government equipment simply handled through the new system when it no longer retained higher value for resale and reuse. In other words, equipment of value greater than the recycling system would cover would not be entering the recycling system anyway.

As some industry stakeholders have insisted that large business and large government units not be included in the new system, this is a reasonable compromise and I believe we can get support from the local governments whose equipment is not included in the system. However, it would be wise to have meetings with the procurement and property management staff of those jurisdictions to get their input for most effective language.

## **Section 8. Business Participation**

It is unfortunate that these businesses don't simply have access to the program. As stated above, those units that retain reuse and resale value would not enter the system anyway. Do you have a count of how many businesses this would include and the possible cost and process for receiving and reviewing plans?

From a local government perspective, we are most interested in the services being available to our local businesses, be they large or small.

## **Section 9. Existing collection, transportation and processing services to be used**

Local governments will be most interested in ensuring that there is no "sham recycling" and that at the same time, there are many entities able to assist in providing services,

especially on the collection side. The system as described makes sham recycling far less likely than under current conditions.

In NEPSI, we identified the desire to use existing INFRASTRUCTURE to provide collection, transport and processing. Existing infrastructure includes retail locations, buy-back recyclers, local charities, haulers, disposal facilities etc to provide collection service. This is in contrast to setting up new, separate drop off depots all over the place.

This is different than using EXISTING collection, transport and processing systems. For the most part, existing collection systems for e-waste don't exist in the state. The Take it Back Networks that are developing around the state don't fall into "existing collection..." yet will be essential to establishing the required level of service.

## **Section 10. Registration of Collectors, Transporters and Processors**

Several comments:

- a. It is unclear what will be done with the rate charged for services information that is collected and I can see that that may be problematic for some parties.
- b. It seems like there needs to be some finesse added to what is being reported, depending upon whether by a collector, transporter or processor. If Snohomish County provides material to a registered and approved processor, do we really need to be providing all the information you have listed, and how would we know it?
- c. I applaud you for tackling the prison labor issue, which seems confusing to some. A system that pays for collection, transport and recycling eliminates the drive for some governments to consider use of prison labor (to avoid the costs of private sector labor when struggling to finance a program). When those costs are removed from governments and our citizens, then there are many more benefits that result from living wage jobs, new private sector businesses, economic development and generation of tax revenues. I think there is only one county in the state making use of incarcerated labor for its e-waste program and I recommend that Ecology discuss with them the implications of the new program on their existing program. I think their existing program might be able to continue if incarcerated labor is only engaged in testing equipment for reuse and refurbishment. This will require some in depth exploration.

## **Section 11. Green Track Label**

No comment. If this is deemed desirable by industry stakeholders and the state, I don't think local governments will have any problem with it.

## **Section 12. Confidentiality, exception**

No comment.

## **Section 13. Misbranding**

No comment.

## **Section 14. Reuse of Covered Electronic Products**

The program outlined in this draft will greatly expand and encourage reuse by providing a no cost collection system for those items reuse organizations cannot refurbish. Reuse is a higher priority than recycling in Snohomish County and the State, so this aspect of the system's design is very important. We want reuse for the economic development opportunities and to close the digital divide, so more of our citizens can have access to computer technology, so necessary for school and job opportunities.

"Sham reuse" has been as much of a problem as "sham recycling." We have had problems develop in Snohomish County with small businesses, school districts, Take it Back Network members and citizens regarding "sham reuse" collection and export schemes. Requiring that only registered processors be allowed to ship out of state for reuse is a very smart approach. Any entity shipping for reuse will undoubtedly create a stream of material that is not functional and can only be recycled. Requiring registration is a good way to capture this.

I think there is still a disincentive built into the system as it is described and I don't know how to deal with it. If HP wants to get as much equipment back through a program they have established, to ensure they meet their goal, they are unlikely to contract with a charity that will pull out 10% for resale, compared to Snohomish County that will pull out none.

What follows is not well thought out...

Through sorts and industry standards, I think we could establish an assumed % of what is collected that can be assumed of high enough quality for reuse. I often hear "no more than 6%." What about allowing a 6% "credit" as an assumed reuse rate for any plans that contract with reuse organizations, for the amount of material that goes through those organizations.

For instance: let's say 90% of what HP collects in its program is with retailers and governments, and 10% is via Goodwill. They collection 10,000,000 lbs. 1,000,000 lbs. would have been through Goodwill with a 6% reuse credit amounting to 1,060,000 as the Goodwill portion and a total of 10,060,000 being acknowledged as their "count." They could have had the whole 10,060,000 go into recycling, but by

diverting to reuse, the system costs were avoided. (ie no payment for collection, transport or processing. those costs have been delayed...)

Alternatively, those plans with a reuse organization could be credited with an actual amount, if reported by the reuse organization they have partnered with. That could be part of the contract with the reuse organization. Then instead of assigning a percent, it would be actual.

#### **Section 15. Consumer Information**

Local governments should be able to accept this as written, but it does place more responsibility on the State and less on manufacturers than might be wise. Under this description, why would any manufacturer ever purchase advertising space promoting the program? Why would they list it in their display ads, put it on their websites, or train their employees? It places the burden of education completely on the State and therefore, if the collection rates are not attained, all will point to the State's inadequate education program as the reason why. The State's activities should be supplemental to that of the TPO and individual plans, such as providing information on its 1-800-recycle site and line. But that should supplement the other programs and link to them, not be the primary portal for the public.

#### **Section 16. Waste Reduction, Recycling and Litter Control Act**

No comment, but I and other local governments would benefit from a better understanding of revenues, potentials and impacts.

#### **Section 17. Managing Existing Products**

It is very important to local governments that collection, transport and processing costs of these products be covered. Details of how this is done in a front-end financed system is not our area of concern.

#### **Section 18. Identification Labeling**

No comment.

#### **Section 19. Restrictions on Hazardous Substances**

This is an important section and begins to move us away from toxic products that are more difficult and expensive to recycle, and have environmental risks that must be dealt with during recycling. This should drive system costs down over time. Local governments are likely to see reduced future costs (such as possible PBDE cleanup costs) as a result of this section. The implementation date is too early to be reasonable for manufacturers. I would suggest June 30, 2007 for all but PBDE and set that at June 30, 2008.

#### **Section 20. Deferral to National Program**

This needs to have additional text added in order to be supportable by local collectors and governments. The financing mechanism must cover collection, transport and processing. It is possible for a national system to be put in place that only covers processing costs and that would not be acceptable in replacing our state law.

#### **Section 21. Financial Assurance**

I don't know enough to comment with accuracy on this. I think that requiring financial assurance like this from collectors will be problematic. If the system is set up correctly, collectors will not receive any funds unless the material they have collected is "entered" into the system, and therefore incentive to stockpile is eliminated. It seems to me that the financial assurance is needed on the processor, and maybe not even on the transporter (?)

#### **Section 22. Penalties**

My comments on Sections 23 – 29 will first address any issues particularly of importance from a local government and collector perspective. I will then add any comments that might be useful from the NW TPO discussions and other sources.

#### **Section 23. Purposes – Construction**

#### **Section 24. Definitions**

It looks like some definitions are not the same as those in Section 2. These should be consistent unless there is a reason otherwise. For instance: "covered electronic products."

Section 25. Materials Management and Financing Authority created – Membership

Based on the NW TPO discussions, I think this is a viable organizational structure, and you might see if the NW TPO support team (including legal) can suggest refinements. You might also ask for review and comment from several of the Canadian TPOs and CA system staff (who have been interested in what that system would look like as a TPO system).

The one problem I see is the definition of who comprises the board. I would anticipate there to be several hundred companies participating in the standard system. That would be an unworkable board. Perhaps membership is all participating companies, and they elect a board. Finding out how the boards of the other TPOs are established could assist.

#### **Section 26. Scope of authority's powers**

##### **Set Fee Level**

If I understand this correctly, there is a fee of \$10 (or more) per unit sold. However, if more is collected than needed, that is a credit for the next year's payment of \$10 per unit (so the actual cost to the manufacturer, the following year, based on a surplus, might actually be \$9.) Is that correct? If so, clever work... this would answer the question of how the system is funded in the first year. Also, it allows the TPO to adjust fees up or down, as soon as it feels it is ready. Nice. I don't know that \$10 per unit is the right number and suspect that we need a different price for televisions, monitors and desktop computers, but the simplicity is attractive.

##### **Use Funds**

In subsection (1), I think there is a mistake in referring to approved manufacturer plans. The Authority will be developing the plan on behalf of the participating manufacturers, not approving and paying for their individual plans.

In subsection (3), it seems unfair for the Authority to pay Ecology's costs for anything more than the Authority's plans, not the independent plans.

In subsection (4), the financial assurance is the responsibility of the contracted parties. It seems that it should be the same for the Authority.

##### **Adopt general operating plan**

In subsection (1), I don't understand the reference to "individual programs."

In subsection (3), I don't understand the reference to implementing approved manufacturer plans. There won't be individual manufacturer plans. The Authority needs to create the plan on behalf of its members.

There needs to be an annual hearing and an annual update to the plan.

Sections 27 - 31.

No comment.

BY POPULATION

| County             | Population | 1 opportunity per 11,200 |
|--------------------|------------|--------------------------|
| King               | 1,761,411  | 157                      |
| Pierce             | 740,957    | 66                       |
| Snohomish          | 639,409    | 57                       |
| Spokane            | 431,027    | 38                       |
| Clark              | 379,577    | 34                       |
| Kitsap             | 240,719    | 21                       |
| Yakima             | 226,727    | 20                       |
| Thurston           | 221,950    | 20                       |
| Whatcom            | 176,571    | 16                       |
| Benton             | 153,660    | 14                       |
| Skagit             | 109,234    | 10                       |
| Pop. over 100,000  | 5,081,242  | 454                      |
| Cowlitz            | 95,146     | 8                        |
| Grant              | 78,691     | 7                        |
| Island             | 76,384     | 7                        |
| Lewis              | 70,404     | 6                        |
| Grays Harbor       | 69,406     | 6                        |
| Chelan             | 67,973     | 6                        |
| Clallam            | 66,892     | 6                        |
| Walla Walla        | 56,751     | 5                        |
| Franklin           | 56,126     | 5                        |
| Mason              | 52,129     | 5                        |
| Stevens            | 40,776     | 4                        |
| Whitman            | 40,702     | 4                        |
| Okanogan           | 39,134     | 3                        |
| Kittitas           | 35,206     | 3                        |
| Douglas            | 33,753     | 3                        |
| Jefferson          | 27,716     | 2                        |
| Pacific            | 21,103     | 2                        |
| Asotin             | 20,625     | 2                        |
| Klickitat          | 19,547     | 2                        |
| Adams              | 16,602     | 1                        |
| San Juan           | 14,761     | 1                        |
| Pend Oreille       | 12,254     | 1                        |
| Skamania           | 10,292     | 1                        |
| Lincoln            | 10,201     | 1                        |
| Ferry              | 7,417      | 1                        |
| Columbia           | 4,093      | 0                        |
| Wahkiakum          | 3,748      | 0                        |
| Garfield           | 2,371      | 0                        |
| Pop. Under 100,000 | 1,050,203  | 94                       |
| Total population   | 6,131,445  | 547                      |

## **Comments on September 2005 Draft: Management of Unwanted Electronic Products**

Submitted by:

Suellen Mele, Washington Citizens for Resource Conservation

Mo McBroom, Washington Environmental Council

### **Section 1. Purpose and Findings**

Regarding paragraph 6, see our comments in Section 4, including alternate language.

Regarding paragraph 8, see our comments in Section 9.

### **Section 2. Definitions**

Many changes have been made to this document since the first draft. The definitions should be reviewed to make sure that they still match the language in the document. Some of them may not be required, and some additional definitions may be needed. WCRC made a number of recommendations for definitions in our comments on the August 2005 draft.

Some specific suggestions are as follows:

- In the definition of covered electronic products, please add an exclusion for computers and TVs embedded in vehicles and medical devices (see language in HB 2488 and in WCRC's comments on the August 2005 draft). This was specifically requested during an HB 2488 hearing, and there was agreement from stakeholders to include it.
- We are still concerned that the definition of "collection location" will exclude certain viable government sites.
- In the definition of "collection location equivalency," using curbside collection as the standard is too restrictive. Also, this definition does not seem to match the intent of the text.
- During discussions about HB 2488, a stakeholder specifically asked not to use "CPU" in the definition of covered product since a CPU is one component in the computer (the larger unit).
- We agree with Sarah Westervelt's comments that the definition of "unwanted electronic product" should be changed to clarify that we are not just talking about non-working units.

### **Section 3. Intent**

This section outlines an interesting interim alternative to a ban. However, we would like to see more discussion about this possibility, and understand better whether it is workable for local governments and private collectors. The advantage of such an approach is its potential to divert covered electronic products from disposal. However, we are concerned about the viability for local governments and the private sector of

administering this fee. We are also concerned about sending the wrong message to consumers about the safety of disposal.

It is critical that any language NOT impact the bans that are already in place locally or the ability of local jurisdictions to implement new bans. Also, if this approach were to be implemented, the funds collected should go into a designated account rather than the general fund. Language would need to be fine-tuned to clarify that hazardous waste from the processing of covered electronic products will not be allowed in solid waste landfills. Clarification would also be needed that business generators will not be allowed to dispose of covered electronic products even for the increased fee.

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| <b>Section 4. Costs to be born by manufacturers through the sale of their products</b> |
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We strongly agree with Ecology's draft language that recycling program costs should be the responsibility of the manufacturers and there should be neither an end-of-life fee when the product is recycled nor an advance fee collected at the point of retail sale.

Listing alternate ways in which manufacturers can recoup their costs (fee at wholesale, first point of possession, etc.), however, adds unnecessary complexity and confusion. It's impractical to expect wholesalers or those who first possess the products in Washington to address a possible diversity of visible and invisible fees. For example, wholesalers and retailers could end up having to pay separate fees on some brands but not others. Distributors and wholesalers would need to track equipment going into Washington from equipment going to other states, paying the additional fee to manufacturers only for the products destined for Washington. In the case of internet sales where customers are the first point of possession, some sales would have a visible fee while others would not.

As important as these practical realities is the nature of the message we send to the public. Although there is an argument that a visible fee can serve to education the consumer, there are definite drawbacks to having recycling program costs appear as a visible fee, rather than wrapped into the base price of the product. For example:

- Product stewardship programs serve the important purpose of linking (both practically and financially) the end of life recycling of a product with product manufacture and consumption. A separate, visible fee creates the false perception that recycling programs are an "add on" rather than part of the true base costs of producing and consuming such a product.
- As with the car tab controversy, visible fees can cause a backlash against the recycling program, the government's role in requiring recycling, or the very concept of recycling itself.
- In the current political climate, visible fees will be considered by some to be a "tax." This makes such fees more precarious and subject to repeal.

Here is possible alternate language:

Each manufacturer participating in the standard program implemented by the Financing Authority will pay fees to the Authority to cover their portion of costs. The Financing

Authority will determine the fees. Manufacturers with independent programs will fully fund the implementation of their programs.

#### **Section 5. Distribution of Responsibility**

We acknowledge that there are reasons for allocating responsibility by market share as well as by return share. Each of these methods burdens certain manufacturers more than others.

We recommend allocating responsibility based on return share, while allowing the Authority to allocate its costs to participating members however it chooses. This leaves open the possibility that while the Authority will need to reach a goal based on return share, it could ask its members to cover their costs based on market share. In addition, to ensure that new entrants and newer companies (whose return share will be zero or low) don't get a free ride, we recommend that they be required to participate in the Authority and pay into the standard program for a certain number of years. This will ensure that they cover their share of orphan waste and that if they go out of business they will not leave others to foot the bill for products they produced.

#### 6. Manufacturing Registration and Licensing

We support the registration of all manufacturers selling into the state. We also suggest that the fee be adequate to cover Ecology's costs of updating the current 800 number and website as they relate to electronics.

It is unclear to us as to the need for and purpose of both the registration and licensing requirement.

Section C mentions a "certification" that isn't further described in the language; it probably should say "registration."

We suggest adding the following (or similar) language:

It will be illegal for any manufacturer to distribute, or cause to be distributed, covered products unless they are registered and have an approved plan. DOE shall advise all in-state sellers and publish a list on their website of complying manufacturers and their product brand names.

#### 7. Plans

It's my understanding that this section indicates that the plans and programs developed in response to this legislation must cover private individuals, small businesses, governments, schools districts, institutions of higher education and charities. We fully support this. We think that some rewriting would be useful to clarify this intent. In

addition, a definition of small business needs to be added. We'd suggest 200 or fewer employees.

The document does not yet contain recycling standards. These are critical. As part of the plan process, each manufacturer must agree to use recycling providers (including sub-contractors) that meet certain recycling standards.

The level of service is attainable. WCRC is working to extend to other counties the Take It Back Network approach used by Snohomish and King Counties. Retailers in less urban counties, such as Yakima and Island, have expressed interest in participating and we expect more would participate if they did not need to charge an end-of-life fee.

#### 7. Government Electronic Products Recycling and Procurement Practices

We strongly support the creation of a General Administration surplus system that contains provisions for responsible handling of covered electronic products. WCRC has conveyed our concerns to the Department of General Administration about their current surplus system after surplus equipment was found illegally dumped a number of months ago. Non-working or older model computers sold in bulk quantities will most likely be "cherry picked" with the majority of the material either exported to a developing country, thrown into a landfill, or illegally dumped. For the buyer to make a profit, proper recycling would be just too costly.

We also support the inclusion of take back requirements in large government bid requests.

The language states, "Except as provided in section 7, this level of service will be provided to: . . . government." The first paragraph of Section 7 states that certain governments will "establish, operate and maintain a method to collect and prepare for reuse or sale for reuse or recycling, unwanted electronic products that have been purchased and were used in the course of doing business." It also says that other governmental entities with the state may participate in this program. This combination of language could be interpreted to mean that no governments will be covered in the manufacturer programs. This needs to be revised so that it's clear that governments are covered, or that at least small and medium sized governments are covered.

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| <b>Section 8. Business Participation</b> |
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While we appreciate this interesting approach, we have concerns about its political viability. It should be discussed with large businesses and their associations.

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| <b>Section 9. Existing collection, transportation and processing services to be used</b> |
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It will also be important to allow and encourage some new services, especially for collection, such as those potentially available from existing retailers, repair shops, etc.

#### **Section 10. Registration of Collectors, Transporters and Processors**

Some of the reporting requirements listed, e.g. what materials are used for, will only pertain to processors. In addition, some collectors will likely not know some of the information required.

We are supportive of including language to address the use of prison labor and export to developing countries. In addition to the current language, additional recycling standards should be added to this section. To our knowledge, there is no existing recycler certification process that adequately reflects high recycling standards. Therefore, this document should contain strong recycling standards and also allow the option for Ecology to develop rules.

Standards should cover the following areas:

Recyclers must have and maintain necessary and appropriate authorizations consistent with federal, state and local environmental laws, as well as with laws in recipient countries for any exports.

Recyclers must sort, process and/or technically assess materials to ensure that only tested working equipment is sent into the reuse market globally.

Recyclers must perform due diligence and have documentation regarding downstream facilities and end-use markets, ensuring compliance with local, state, national and international laws (and other restrictions that will need to be detailed). For example, processors shall not export covered electronic equipment to a country that is not a member of the Organization for Economic Cooperation and Development or the EU, except that covered electronic equipment may be exported if it is in working order and destined for direct reuse.

Recyclers must implement programs to safeguard occupational and environmental health and safety.

Recyclers must have security and data security systems in place.

Recyclers must have appropriate mechanisms to ensure proper closing of the facility consistent with environmental standards.

#### **Section 11. Green Track Label**

While we support green labeling programs, we are concerned that this will be difficult and expensive to implement and will become politically problematic in connection with this bill.

#### **Section 14. Reuse of Covered Electronic Products**

This system will strongly encourage reuse through charities and refurbishers by providing a no cost system for the items that cannot be reused and must be recycled. This is excellent and we strongly support this result. However, we think that there will be a disincentive for processors under manufacturer programs to reuse, since it's likely that they will receive more money for recycling than they would to divert working products for reuse. This is a difficult issue to resolve.

Sham reuse is a serious concern, and language needs to be added to this section to ensure that only tested and working equipment can be exported to non-OECD countries for reuse. See Sarah Westervelt's comments for more detail about this issue.

#### **Section 15. Consumer Information**

Manufacturers, not Ecology, should implement the advertising campaign and be the primary responsible party for implementing the education program. Therefore, we recommend deleting the final bullet.

#### **Section 16. Waste Reduction, Recycling and Litter Control Tax**

Manufacturers should be primarily responsible for education, with assistance from local governments, state government and retailers. Therefore, this tax would not be needed to implement the smaller state role in education programs. In addition, we have concern about the political viability of expanding the litter tax.

#### **Section 18. Identification labeling**

Replace "CPU" with "computer." (See our comments in Section 2, fourth bullet.)

#### **Section 19. Restrictions on Hazardous Substances**

Phasing out the use of toxic substances in covered electronic products is very important to us. We recommend that this section match the RoHs Directive. This will meet the current (and evolving) standard while providing industry with consistent requirements. Since the RoHs Directive provides extensive detail and offers various exclusions, we believe that we'll need to reference RoHs directly to have consistent requirements. The language also needs to be written in such a way as to ensure that Washington is not delegating its legislative authority.

#### **Section 20. Deferral to national program**

Please clarify that the financing mechanism must cover collection, transportation and processing.

#### **Section 21. Financial Assurance**

We are concerned that requiring financial assurances for collectors will have a chilling effect on the number of retailers, other businesses, and charities that are willing to act as collection sites. Collectors will not receive money until the equipment gets into the manufacturer's system, so it seems unlikely that they will stockpile covered electronic products.

#### **Section 22. Penalties**

We might want to consider graduated enforcement, such as starting with first warnings. We are not able to comment on the effectiveness of the dollar amounts recommended. We think that manufacturers that do not have an approved plan or participate as part of the Authority should be prohibited from selling in the state.

#### **Sections 23 – 31**

We support the creation of the Authority. We have not yet reviewed this section in detail, but will do so soon and provide any additional comments.

#### **Goals**

Goals and accountability mechanisms need to be added to ensure an effective overall program and a level playing field among manufacturers.

Apple Computer, Inc. 1  
September 23, 2005

Jay Shepard

Washington State Department of Ecology

PO Box 47600

Olympia, WA 98504-7600

Submitted via Email to [jshe461@ecy.wa.gov](mailto:jshe461@ecy.wa.gov), [hq@agreementdynamics.com](mailto:hq@agreementdynamics.com)

RE: Management of Unwanted Electronic Products as drafted in September 2005

Dear Mr. Shepard:

Apple appreciates the opportunity to provide comments and concerns on the latest draft

provided by the Washington State Department of Ecology SWAC Subcommittee dated

September 2005.

As you know, Apple is committed to preserving the environment. In recent years, Apple has

been accredited not only for our product design but also for our good public policy. In

addition, Apple is an active partner with the National Environmental Product Stewardship

Initiative (NEPSI) dialogue and the Electronic Industries Alliance's (EIA) national efforts working

to develop agreements on recycling programs. We believe this national dialogue will result in a

comprehensive program that will be both effective and easy to implement. There are currently

3 bills at the Federal level that Apple has been working with the authors' offices on that

deserve attention. Two of them would provide tax incentives for electronic manufacturers on

the development of environmentally sound recycling programs and the third bill proposes to

place an advanced recovery fee on the sale of new computers to fund recycling programs.

While Apple prefers a national solution, we have helped shape state solutions that are effective

in eliminating electronic waste and does not place any in-state manufacture at a competitive

disadvantage. Apple was a leading company in California's legislative effort regarding to

electronic waste. We were the first computer manufacturer to support the legislation 3 years

ago and continuously worked with the author until passage. We have also participated in the

Maine, Minnesota and Washington stakeholder group to discuss solutions to recycling

electronic waste and is actively participating in the Northeast Recycling Coalition's Stakeholder Dialogue.

The discussion draft's proposed model attempts to create an electronic waste recycling

program at the state level that is unfair to companies like Apple that have operations in the

state and would result in a much higher cost of recycling than is necessary.

Specifically, this bill

would require any manufacturer that has its products sold into the state to pay a fee per unit to

cover the cost of recycling or to provide their own means to recycle discarded devices in the

state. Apple believes that the burden of electronic recycling is a shared responsibility amongst

consumers, retailers, manufacturers and local governments. Apple believes that municipalities,

who have the expertise and experience in developing waste management solutions, should

work with manufacturers to build upon pre-existent solutions to develop efficient and practical

systems for covered electronic devices. Apple also believes that the financial burden of this

program should be shared amongst all parties: consumers, retailers, manufacturers and local

governments. This draft places all financial responsibility on one party, the manufacturers,

unfairly. Apple believes that this bill will be nearly impossible to implement without unduly

burdening manufacturers that are trying to comply with the law and would provide Apple Computer, Inc. 2

competitive advantages to those manufacturers that seek to cheat the system through some of

the many loopholes that this current draft provides.

While Apple is not a subcommittee member, we appreciate the ability to provide written

comments. Below is a section-by-section breakdown of our concerns on the draft dated

September 2005, along with suggestions that we feel will make the bill easier to comply with.

#### *Section 1*

This section requires the authority and manufacturers to assure that existing collection, transportation and processing systems and services within the state are used in order to minimize costs. As a practical business practice, manufacturers and the manufacturers that 'buy-in' to the authority will naturally look for the lowest cost alternative that meets the required performance standards. A manufacturer should not be required to use existing systems and

services when deciding how to run its business. The state and existing systems and services are placing the financial burden on manufacturers. They should then also be willing to run the risk of not being able to participate in the program if the manufacturer chooses to contract with different entities.

#### *Section 2*

The term 'current resident' limits participation in this program to those with a residential address; thus excluding businesses, schools and government agencies. Apple believes that the scope of covered products and responsibility of recycling should include all sales into the state, regardless of its final use. In our experience, even when the manufacturer provides a take-back program within the sales contract to a school or business, the products are resold through varying (but untraceable) channels at very low prices and eventually end up in the waste stream.

Why are manufacturers that have less than 10 employees exempted from this bill? It is unfair to place their share of responsibility on larger manufacturers.

The term 'unwanted product' should not be used to determine the scope of products covered within the bill. Instead, the scope of covered products should include devices that fall within product categories (desktop/personal computers, computer monitors, portable computers and televisions) that are discarded and enter the waste stream.

#### *Section 3*

The goal of this draft should be to ensure that discarded covered electronic devices are recycled when they reach the end of its useful life. The current draft states that the goal of this draft is to ensure that all covered electronic devices are recycled. Apple suggests that the language be amended to meet a more realistic goal. No program will recover all devices that enter the waste stream. For example, your state, which has a very environmentally educated population, has only a 60% recycling rate on paper, which is far easier to recycle than an electronic product.

Apple Computer, Inc. 3

In addition to modifying the language to reach realistic goals, the proper recycling of devices sold to and discarded by business, education and government entities should be included in the goal of this bill. In our experience, even if the manufacturer provides a take-back program within the sales contract to the school or business, the products are resold and eventually end up in the waste stream.

We believe that any system that is created should encourage consumer participation and be accessible by every consumer (household, business, government) to ensure participation. The goal of this draft should reflect that concept.

Apple suggests the following language for the goal of this draft: "It is the goal of the State to promote product stewardship by producers, retailers, consumers and governments and to ensure that all consumers are educated, encouraged and are provided ways to ensure the proper disposal of covered electronic devices."

#### *Section 4*

While Apple agrees that collecting a fee and having the manufacturer/retailer

remit the fee is the most effective model, to most accurately reflect the number of covered devices sold into the state and to collect the fee on every product sold into the state, the fee must be visible to the consumer at the point of sale. A manufacturer cannot adequately assign a fee to wholesalers and resellers that do not reside within but sell into the state because manufacturers cannot predict the location of the end-user. By placing the fee at point of sale and having retailers remit the fee will most fairly assign the fee on all covered products. In addition, placing a fee at the time of sale and have it be visible to the consumer is one of the best ways to educate the consumer of the program.

#### *Section 5*

We believe that the recovery of orphan waste, or devices manufactured by companies no longer in business, should be the responsibility of the government or retailers who sold the item and not other manufacturers who were the now out-of-business company's competition. There is no fair way to assess responsibility on manufacturers. Some of which were not even in business at the time of the waste's production. In addition, business wise, a company already lost the sale to the consumer from that device, why should the manufacturer be penalized twice for the same device?

Also, in this current assessment plan, current manufacturers cannot provide data on sales into the state from the previous year. Most manufacturers do not control their supply chain and often cannot obtain a count of the number of devices sold by wholesalers into a particular region.

#### *Section 6*

Why should there be a fee be assigned per registration? There is no governmental responsibility in this model. Registration should directly benefit the administration of the program. The government should be expected to handle and process paperwork as part of the regulatory services they provide for Apple Computer, Inc. 4

businesses that pay taxes in the state. They should not assess more fees on manufacturers who already remit sales tax.

#### *Section 7 (the first one)*

The level of service required to run collection sites by manufacturers is unnecessary. The more collection sites there are, the less each site would receive in volume. Recycling is a very costly program to run; however, some of the ways to mitigate the costs are to increase the volume per site (since maintaining the site is the large cost in the system). Having one collection site per 11,200 people would result in too many sites.

#### *Section 7 (the second one)*

It is very hard to ensure that governmental entities, especially schools, give the product back to the manufacturer once the product reaches the end of its useful life. In our experience, we find that most schools sell the device to students and teachers at very low rates who otherwise couldn't afford to own the device.

#### *Section 9*

Our concerns for this section duplicate our concerns in Section 1.

#### *Section 11*

These are not true incentives to design for the environment.

Apple believes that this draft can provide incentives for green design in three

ways. The first is to assign the fee on a weight basis instead of a per unit basis. Assigning the fee by weight accurately reflects how recycling is accounted for and it will distinguish between similar performing products that, while they fall within the same product category, are very different in relation to size and weight.

The second incentive is to provide manufacturers with an opportunity to have their products de-listed from the list of covered electronic devices. Apple believes that the scope of covered devices should only cover products that were proven to be hazardous after peer-review scientific testing has been done. The state, similar to California, should make available to manufacturers these testing methods to allow manufacturers to test their device to design products that no longer fail these tests. If the manufacturer can prove that the device is no longer hazardous, it should be removed from the covered device list and no further fees should be assessed on it.

The last incentive is to reward manufacturers who develop products with a longer lifespan. Apple feels that this incentive will cause manufacturers to redesign their products for longevity and upgradeability.

#### *Section 15*

There is a requirement for manufacturers to inform consumers on how to recycle covered electronic products at the end of life. In most cases, the retailer, not the manufacturer, has direct contact with the consumer. It should be the retailer's responsibility to inform the consumer on proper end-of-life management techniques. In cases where manufacturers sell directly to the consumer (as Apple Computer, Inc. 5

Apple does both on-line and through our retail stores), the manufacturer should assume the responsibilities of the retailer. Apple believes that the best way to educate new consumers of their responsibility to dispose of the product properly is to have the disposal fee be visible on the product.

#### *Section 16*

Why are manufacturers, wholesalers and retailers required to pay the waste reduction, recycling and litter control tax? The entire program is funded either by manufacturers. It's our understanding that this fee will be used to fund the educational requirement placed on the Department of Ecology in Section 14. However, we feel that the Department should be responsible to educate consumers without manufacturer payment. The government has no financial burden anywhere in this program. The government already educates consumers of recycling on paper, plastic and aluminum products. They can easily expand current educational literature to include covered electronic devices with little to no cost.

#### *Section 17*

Would the fee assigned per unit at the time of first possession into the state account for increases in market share due to products that are brought into the state but purchased outside of the state?

#### *Section 19*

While Apple appreciates the state's attempt to mirror the RoHS Directive in material phase-out, this section does not harmonize the state with the Directive. Two key components missing with this section are the use of mercury-added

lamps for backlighting purposes and an exemption to the material phase-out to service devices that were originally manufactured before the effective date.

*Section 26*

We believe that this fee is too high, especially considering the different products that the scope contains. The cost to recycle a 12" laptop is considerably less than the cost to recycle a 32" CRT television. The fee on each product should accurately reflect the cost of recycling the product. We suggest that the fee reflect that accurately and be assigned by weight of the unit. The cost of recycling is charged by weight.

In addition, manufacturers should not be charged the difference between the total cost of recycling and what had been collected retroactively to cover any shortfall in the cost of recycling. The fee should be set properly to anticipate the true cost of recycling.

Also, the authority's allowable expenses (for example: salaries, benefits, operating costs, consumable supplies, equipment, office space, etc) should be capped between 5-10% of the funds collected. This will ensure that the program will be operated as efficiently as possible.

Apple thanks you for the opportunity to provide comments to the Regional Model Electronic

Waste Legislation as drafted on September 1, 2005. We look forward to working with you

Apple Computer, Inc. 6

further as we finalize this draft. Please feel free to contact me at (408) 974-0377 if you have any questions.

Very truly yours,

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